

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ELBERT RUTHERFORD,

:

Plaintiff,

v.

:

Case No. 3:19-cv-347

COMMISSIONER OF THE
SOCIAL SECURITY
ADMINISTRATION,

:

JUDGE WALTER H. RICE

Defendant.

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #11);
OVERRULING PLAINTIFF'S OBJECTIONS THERETO (DOC. #12);
SUSTAINING DEFENDANT'S MOTION TO DISMISS FOR LACK OF
JURISDICTION (DOC. #6); DISMISSING PLAINTIFF'S CLAIMS
WITHOUT PREJUDICE; OVERRULING PLAINTIFF'S MOTION FOR
LEAVE TO APPEAL *IN FORMA PAUPERIS* (DOC. #13); JUDGMENT
TO ENTER IN FAVOR OF DEFENDANT AND AGAINST
COMMISSIONER; TERMINATION ENTRY

On April 2, 2020, United States Magistrate Judge Sharon L. Ovington issued a Report and Recommendations, Doc. #11, recommending that the Court sustain Defendant's Motion to Dismiss for Lack of Jurisdiction, Doc. #6. *Pro se* Plaintiff, Elbert Rutherford, has filed timely Objections, Doc. #12, to the Report and Recommendations, and seeks leave to appeal *in forma pauperis*, Doc. #13.

Based on the reasoning and citations of authority set forth by Magistrate Judge Ovington, as well as upon a thorough *de novo* review of this Court's file and

the applicable law, the Court ADOPTS her Report and Recommendations, Doc. #11, in their entirety and OVERRULES Plaintiff's Objections thereto, Doc. #12.

Because Plaintiff has not exhausted his administrative remedies, this Court lacks jurisdiction over his claims. The Court SUSTAINS Defendant's Motion to Dismiss for Lack of Jurisdiction, Doc. #6, and DISMISSES Plaintiff's claims WITHOUT PREJUDICE. Given that no reasonable jurist would disagree with this ruling, and that any appeal would be frivolous, the Court OVERRULES Plaintiff's Motion for Leave to Appeal *in forma pauperis*, Doc. #13.

Judgment shall be entered in favor of Defendant and against Plaintiff.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: April 22, 2020

/s/ Walter H. Rice (tp - per Judge Rice authorization
after his review

WALTER H. RICE
UNITED STATES DISTRICT JUDGE